

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: May 21, 1997

TO : Richard L. Ahearn, Regional Director
Region 9

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Cincinnati Electric, Inc.
Case 9-CA-34528

This case was submitted for advice as to whether employees of a construction industry employer who were transferred to a jobsite to replace economic strikers were, as a matter of law, strike replacements; and whether other employees transferred to the struck jobsite after the strikers' unconditional offer to return to work filled vacancies for which the unreinstated strikers were entitled to an offer of reinstatement.

The Region is authorized to issue complaint for the reasons set forth in the Request for Advice. We agree with the Region that King, Plummer and Sutthoff, the Employer's employees who were transferred from other jobs to the struck jobsite (Dravo), were strike replacements, even though they were not newly hired employees and the Employer's work force was not increased as a result of the transfers.¹

We further agree with the Region that the employees who transferred to the struck jobsite after the Union's unconditional offer to return to work filled vacancies for which strikers were entitled to an offer of reinstatement.² In this regard, we note that Kuderer, Quance, Lazo and Caranado were "permanently" transferred from other jobs of the Employer to work at the struck jobsite **after** the Union's unconditional offer to return. In addition, we note that the Employer's argument that its transfers of

¹ See Mackay Radio & Telegraph Co., 304 U.S. 333 (1938). Accord TWA v. Flight Attendants, 489 U.S. 426 (1989), 130 LRRM 2657, 2659.

² MCC Pacific Valves, 244 NLRB 931, 933 (1979).

employees were merely a realignment of its workforce and that the strikers would not have been employed for the duration of the Dravo job since the Employer intended to replace those employees even absent a strike, is not persuasive. As the Region notes, there is credible evidence that the Employer

specifically told each of the Union employees at hire that they would be working for the duration of the Dravo job.

B.J.K.